IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No. 56 of 1995

Date of decision : August 14, 2007.

Parkash Chander

... Petitioner

versus

State of Haryana

... Respondent

Coram: Hon'ble Mr. Justice A.N. Jindal

Present: Mr. S.K. Sud, Advocate
for the petitioner.

Mr. K.S. Godara, DAG, Haryana
for the respondent.

A.N. Jindal, J

Assailed in this petition is the order dated 16.1.1995 passed by the learned Additional Sessions Judge, Hisar, dismissing the appeal against the order of conviction dated 19.11.1991 passed by the learned Sub Divisional Judicial Magistrate, Fatehabad, however, reducing the sentence to six months without alteration in the sentence of fine.

In brief, the facts are that Himat Singh, Government Food Inspector (PW1) in the company of Dr. Naresh Kumar (PW2) and Rajesh Kumar inspected the Halwai shop of the accused-petitioner (hereinafter referred to as 'the petitioner') and purchased 600 grams of Maida. After complying with all the formalities, the Maida so purchased was divided into three parts converted into parcels, which were sealed according to rules. The sample so sent to the Public Analyst was found to be adulterated and unfit for human consumption. Thus, the complaint was filed against the petitioner.

The trial ended in conviction. The appeal was also dismissed. Hence this revision petition.

As per Public Analyst report, the sample of Maida taken from the petitioner contained 5 living weevil and 3 living meal worms. Thus, it could be presumed that the sample being insect infested was otherwise unfit

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for human consumption. No doubt, the public analyst has not opined in his report that the sample was unfit for human consumption, yet the words "otherwise unfit for human consumption" appearing in Section 2 of the Act are disjunctive of the words proceeding them and it is manifest that an insect infested article of food is adulterated within the meaning of the Act. A similar view was taken by this Court in case **State of Punjab Vs. Dalip Singh**, 1984 (3) Prevention of Food Adulteration Cases 233. It was also observed in case of **Municipal Corporation, Delhi Vs. Tek Chand Bhatia**, 1979 (11) FAC, 218 that on the plain language of the definition of section, it is quite apparent that the words "or is otherwise unfit for human consumption" are disjunctive of the rest of the words proceeding them. It relates to a distinct and separate class altogether. It seems that the last clause "or is otherwise unfit for human consumption" is residuary provision which would apply to a case not covered by or falling squarely within the clauses preceding it. If the phrase is to be read disjunctively the mere proof of the articles of food being 'filthy, putrid, rotten, decomposed..... or insect infested, would be perse sufficient to bring the case within the purview of the word adulterated, as defined in sub-clause (f) and it would not be necessary in such a case to prove further that the article of food was unfit for human consumption. Thus, it would be appropriate to hold on the basis of the report of the Public Analyst that the sample of Maida as purchased from the petitioner was adulterated.

Consequently, findings recording the conviction of the petitioner having not suffered from any illegality could be maintained.

As regards the quantum of sentence, it may be observed that the sample of Maida was taken by the Food Inspector from the petitioner in the year 1987 and he faced trial for four years before the Magistrate, his appeal remained pending adjudication before the Additional Sessions Judge, Hisar and thereafter, the proceedings are pending before this Court. The accused has already suffered a lot due to the longevity of the proceedings for the last 20 years, therefore, it would not be appropriate and or expedient in the interest of justice to send the petitioner in jail at this stage, particularly when the learned Deputy Advocate General, Haryana has failed to bring on record any bad antecedents of the petitioner. The petitioner has already undergone

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for about one month of the substantive sentence, therefore, ends of justice would be met if the sentence is ordered to be reduced to the period already undergone without alteration in the sentence of fine.

Ordered accordingly.

August 14, 2007 **(A.N. Jindal)**
'deepak' **Judge**